

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No. 443 of 1989**

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Tapeswar Yadav (Mandal) @ Tapeswari Yadav Mandal, S/o late Lalchand Mandal, Resident of Village Maheshkhor, P.S. Maheshkhor, Dist. Bhagalpur.

.... .... Appellant

Versus

State of Bihar

.... .... Respondent

**With**

**Criminal Appeal (DB) No.437 of 1989**

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1. Lutehwar Yadav, son of late Baidyanath Yadav.
2. Bishwanath Yadav, son of Bhopal Yadav.
3. Bilash Yadav, son of Bhopal Yadav.
4. Brahmdeo Yadav, son of Bhopal Yadav.
5. Bhopal Yadav, son of late Dukha Yadav.
6. Prayag Yadav, son of Kamleshwar Yadav.
7. Churaman Yadav, son of Kamleshwar Yadav.
8. Cheddi Yadav, son of Janaki Yadav.
9. Rustam Yadav, son of Cheddi Yadav.
10. Lutan Yadav, son of Hardesh Yadav.
11. Mahendra Yadav, son of Cheddi Yadav.

All residents of Village Mahesh Khore, P.S. Samhaura, Dist. Bhagalpur.

.... .... Appellants

Versus

State of Bihar

.... .... Respondent

=====

**Appearance :**

**(In CR. APP (DB) No. 443 of 1989)**

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh, Amicus Curiae

For the Respondent/s : Ms. Shashi Bala Verma, APP

**(In CR. APP (DB) No. 437 of 1989)**

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh, Amicus Curiae

For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**

**and**


**HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA)**


**Date: 22-06-2012**

These two appeals are directed against the a common  
  
judgment of conviction and sentence as against the appellants under  
  
Section 302/149 of the Indian Penal Code (in short IPC) as also




under Section 324/34 of the IPC. The appellant Tapeswar Yadav in Cr. Appeal No. 443 of 1989 has been convicted for offence under Section 302/149 as also under Section 324/34 of the IPC and has been sentenced to undergo rigorous imprisonment for life and rigorous imprisonment for two years respectively. Rest of the appellants in Cr. Appeal No. 437 of 1089 namely Luteswar Yadav, Bishwanath Yadav, Bilash Yadav, Brahmdeo Yadav, Bhopal Yadav, Prayag Yadav, Churaman Yadav, Chhedi Yadav, Rusatam Yadav, Lutan Yadav and Mahendra Yadav have also been convicted for offence under Section 302/149 of the IPC and have been sentenced to undergo rigorous imprisonment for life. Additionally, appellant Bhupal Yadav and Rustam Yadav have been convicted also for offence under Section 326/34 of the IPC and have been sentenced to undergo rigorous imprisonment for five years whereas as appellants Luteswar Yadav, Bishwanath Yadav and Bhupal Yadav and Tapeswar Mandal have been further sentenced for offence under Section 324/34 IPC and directed to undergo rigorous imprisonment for two years. All the sentences have been directed to run concurrently.

2. The prosecution case as it emanates on the basis of the First Information Report lodged on a Fardbeyan of P.W.7 Wakil Mandal is that in his statement before the police recorded at 6 PM




on 31.7.1974 he had stated that on the same day in the early morning at 8 AM while he along with his father Basudeo Mandal (not examined) and brother Babulal Mandal (deceased) and his ploughmen Turu Mandal (PW1), Rupchand Mandal (PW4) as well his other labourers Satyanarain Mandal (PW9), Maheshwari Mandal (PW2), Saryu Prasad Singh (not examined), Narain Mandal (PW6), Dinesh Prasad Mandal (PW5) had gone for ploughing and sowing paddy crop in plot no. 870, and his ploughmen were ploughing the field, he had seen sudden emergence of a mob wherein he had identified 22 of them said to have been armed with Bhala, Garasa, Lathi. He has also alleged that all the members of the mob having arrived in his field while shouting “Jai Mahabir Swami Ki Jai” had made criminal trespass by forcibly entering in his field. His further case was that on the orders given by appellant Tapeswar Mandal, Bhupal Yadav and Luteswar yadav for causing murder, Luteswar Yadav had given the first blow on the back portion of his brother Babulal Mandal by Garasa and rest of the appellants with others had encircled him and also assaulted him by Lathi, Bhala and Garasa. The informant in this regard has further stated that seeing the aforesaid assault on his brother Babulal, his father Basudeo Mandal had sought to save him on which appellants Lachmi Mandal, Rustam Yadav, Bhupal Yadav and Sikandar Yadav had also




assaulted his father Basudeo Mandal by Bhala, Garasa and Lathi as a result whereof, his father also fell down on the earth. The informant in this regard has also alleged that after the assault on Babu Lal Mandal and his father Basudeo Mandal, when his cousin Rupchand Mandal (PW4) came to save them, he too was assaulted indiscriminately by Luteshwar Yadav, Tapeswar Mandal and Sukhai Yadav by Lathi and Bhala. The informant in the F.I.R. had claimed that his brother Babu Lal Mandal having sustained serious injury in his back, head and arms had died at the spot whereas his father Basudeo Mandal and his cousin Rupchand Mandal on account of having serious injury on their person were moved to Bhagalpur hospital.

3. The informant has alleged land dispute as the motive for the aforementioned murder of his brother Babu Lal and assault of his father and brother, inasmuch as, according to him, the plot in question on which the entire occurrence had taken place was in the name of his father but the appellant Tapeshwari Mandal had purchased an adjacent plot on 26.4.1974 whereafter he and his father had filed a preemption case under Ceiling Act and had depositing the requisite amount under the sale deed on 23.7.1974 leading to issuance of notices of preemption case against the appellant Tapeshwari Mandal. Thus as per the version of informant, it was on



account of this preemption case by him and his father that appellant Tapeshwari Mandal had tried to avenge the enmity. The informant in fact also had pointed out towards another land dispute relating to mortgage deed dated 26.3.1964 which was executed by Most. Anaro Devi in favour of Tapeshwari Mandal and in this it was alleged that on account of this land dispute as well that the appellant Tapeshwari and others had caused murder of his brother Babu Lal Mandal as also had caused vital injuries on the person of his father Basudeo Mandal and cousin Rupchand Mandal.

4. On the basis of such F.I.R Sanhoula P.S Case No. 6 dated 31.07.1974 was instituted and the police after investigation has submitted charge sheet for the offences punishable under Section 147/148/149/326 and 302 of IPC as against 21 accused persons including the appellants. The case being triable by the Court of Session after its commitment by an order dated 18.08.1981, the trial had commenced in the Court of First Additional Sessions Judge, Bhagalpur and during the course of trial, two of the 21 accused persons had died and thus the trial remain confined to 19 persons i.e. 12 appellants and Lachmi Mandal, Sikandar Yadav, Chabho Yadav, Chintaman Yadav, Anup Lal Mandal, Jagdish Yadav and Harvesh Yadav. The trial Court on the basis of evidence on record had convicted only these 12 appellants while acquitting 7



other co-accused namely named above Lachmi Mandal, Sikandar Yadav, Chabho Yadav, Chintaman Yadav, Anup Lal Mandal, Jagdish Yadav and Harvesh Yadav basically on the ground that they in course of trial could be identified by only one witness. It is against this judgment of conviction and sentence these two appeals one by Tapeswar Yadav (Mandal) and the other by the rest of the appellants have been filed.

5. Learned counsel appearing on behalf of the appellants while assailing the impugned judgment of conviction and sentence has submitted that the trial Court has committed an error in holding the informant as eye witness and according to him the only eye witness to the occurrence being the injured, P.W-4, his earliest statement before the police in hospital and his later conflicting deposition in court has virtually sealed the fate of prosecution case. He has further submitted that there is a peculiar trend in the behaviour of the witnesses, inasmuch as, the witnesses of Mandal community have tried to exonerate the accused who were Mandals and likewise the witnesses of Yadav community have tried to give a supporting version for the accused persons belonging to Yadav by caste contrary to their earlier statement before the police. The main point of attack of the learned counsel for the appellant however is as with regard to issue of identification of these appellants and in this


connection, he has submitted that if the safe standard adopted by the trial Court for acquitting such accused persons having been identified by one witness was strictly followed, there being no other eye witnesses except P.W-4 even these appellants would be entitled for same treatment of being acquitted from their charge.

6. Expanding the submissions learned counsel for the appellant had drawn attention to the evidence on record to show that the motive suggested for occurrence by the informant in the F.I.R. having been itself given complete go bye by all the witnesses in course of trial and there being unimpeachable evidence of P.W.-2 that there was an altercation with regard to irrigation of field between Sukhai and the father of the informant in which the prosecution party themselves were aggressors, the same would itself completely belie the whole genesis and the manner of occurrence. According to the learned counsel for the appellant, though the prosecution had cited as many as 7 eyewitnesses and 4 of them namely, P.W-1, P.W-5, P.W-7 and P.W-9 had been declared hostile and rest of them including injured P.W.4 had also not supported the prosecution case, had actually left the prosecution with no eye witness. As with regard to injured witness P.W.4, it has been argued that his evidence also does not inspire confidence in view of his earliest statement given to the police in the hospital which is

Exhibit-2. He has also submitted that non-examination of the investigating officer in such circumstance has also vitally prejudiced the appellants to no uncertain end. Mr. Neeraj, learned counsel for the appellant has accordingly, submitted that on the basis of such sketchy evidence, the conviction of appellants by the trial Court cannot be sustained.


7. Per contra, Mrs. Verma, learned counsel for the State has submitted that there would be no question of doubting deposition of 7 witnesses, all of whom were named in the First Information Report by the informant specially when they have got independent corroboration from the injured witness, P.W-4. Learned APP for the State, in this regard has submitted that sustaining injuries on three persons including the deceased at the spot is beyond any doubt which actually fits in with the prosecution case given by the informant to the police and also supported by other witnesses. As with regard to the motive and genesis of the occurrence, learned counsel for the State has explained that there is no discrepancy in the evidence led by the prosecution and that there is hardly any material to prove that the prosecution party was itself aggressor. In sum and substance, she has submitted that despite P.W-1, P.W-5, P.W-7 and P.W-9 having been declared to be hostile witnesses by the prosecution, it would not adversely affect the





credibility of the prosecution case, inasmuch as, the same gets full support from the deposition of remaining witnesses namely, P.W-2, P.W-3, P.W-4 and P.W-8. She has accordingly, summed up her argument by stating that since all these appellants have been identified in the Court by two or more witnesses as a member of the mob and the evidence of the point of assault by appellant Luteshwar Yadav on the person of the deceased has been consistently supported by all the witnesses, the case under Section-302/149 of the Indian Penal Code has been proved by the prosecution against all the appellants beyond reasonable doubt.


8. Before we advert to the aforementioned submissions in the light of the materials on record, it would be necessary for us to have a brief review of the state of evidence brought on record by the prosecution. The prosecution in all has examined 11 witnesses out of whom P.W-1, Turu Mandal, P.W-5, Dinesh Mandal, P.W-7, Vakil Mandal (informant and the brother of the deceased Babu Lal Mandal) and P.W-9, Satya Narayan Mandal have been declared to be hostile by P.W-2, Maheshwari Mandal, P.W-3, Dharamdev Mandal, P.W-4, Rupchand Mandal(injured) and P.W-6, Narayan Mandal are the rest of the witnesses who claims to be the eye witnesses. P.W-8, is the police officer who had recorded the statement of P.W-4 in the hospital on the date of occurrence, P.W-



10 is the Doctor who had examined the injuries on the person of P.W-4 when he was admitted in the hospital on 31.07.1974 i.e. the date of occurrence. P.W-11, Md. Sakur is an advocate clerk, a formal witness who has sought to prove the First Information Report lodged by the informant P.W-7, P.W-12. Dr. C.S Lal is the Doctor who had conducted the post mortem report on the dead body of the deceased, Babu Lal Mandal and P.W-13 is an advocate who has proved the case diary and the inquest report as also seizure list.


9. Apart from the aforesaid 11 prosecution witnesses, prosecution has also proved as many as 8 documents out of which Exhibit-1 is the signature of P.W-4 on his Fardbeyan, Exhibit-1/1 is the signature of P.W-7 on the FIR, Exhibit-2 is the Fardbeyan of P.W-4 recorded in the hospital, Exhibit-3 to Exhibit-3/1 are the Injury Reports, Exhibit-4 is the First Information Report and Exhibit-5 is the truncated copy of the post mortem report, Exhibit-6 is the entire case diary, Exhibit-7 is the inquest report and Exhibit-8 is the seizure list.

10. The defence has not examined any witness nor has they exhibited any document but from the tenor of the cross-examination as also statement of accused persons under Section-313 Cr.P.C, it appears that they have come out with a case that they have been falsely implicated on account of village politics and rivalry



between two castes, namely Yadavs and Mandals. From the reading of cross-examination of the prosecution witnesses, it also becomes clear that the defence has come out with a case that it was the prosecution party which was the aggressor when an altercation relating to irrigating the field of Sukhai Yadav had taken place and regarding which Sukhai has also filed a case as with regard to assault on him.

11. As would be apparent, the First Information Report giving the detailed disclosure of the place and manner of occurrence by also naming of assailants as well as all the eye witnesses including presence of the injured witness Rupchand Mandal (PW4) had itself made task of the prosecution to romp its case home but then sometimes the well deliberated First Information Report itself causes major chinks in the prosecution case. Here in this case, the occurrence as per the informant and other witnesses taken place at 8 AM in the morning but it took the informant more than ten hours in bringing the occurrence to the notice of the police and only explanation given in the First Information Report that the informant was busy in getting his brother and the father treated at Bhagalpur Medical College and Hospital, does not inspire confidence in view of the fact that the statement of his injured cousin brother Rupchand Mandal P.W.4 had already been recorded by the police at 4 P.M. on




31.7.1974 in the hospital. Obviously, if the informant was the person present in course of treatment of his brother and father in the hospital, his statement could have been recorded even earlier, inasmuch as, the injuries on P.W.4 were examined by the Doctor at 2.40 P.M. Thus, the ploy of informant of traveling to Sanhoula his own police station at 6 PM which is far away from Bhagalpur hospital for recording his Fardbeyan by itself creates a doubt of his presence in Bhagalpur for treatment of his father and brother P.W.4. Such delay may itself not be fatal for the prosecution but it would definitely go to show the manner in which it has adversely affected the investigation, inasmuch as, even when the police is said to have been given Fardbeyan at 6 PM on 31.7.1974, it is on record by way of inquest report that the dead body of the deceased Babu Lal was allowed to remain in the field for whole of the day and whole of the night awaiting arrival of the police only on the next day at 8 AM (on 1.8.1974). Whether such delay on the part of the Police rolling into action was on account of delay in lodging of the First Information Report or whether it was slackness on the part of the investigating officer, who has also not been examined in this case, the same had materially affected the collection of vital clues and materials as would emerge from the evidence of the prosecution witnesses.

12. This Court, in the background of the fact that the

informant PW-7 has been declared hostile on the point of manner of occurrence, would accordingly first proceed to examine the evidence of the PW-4. It has to be kept in mind that PW-4 is said to have sustained injury in course of the same occurrence and is said to have been taken to hospital at Bhagalpur where the doctor PW-10 had examined him at 2.40 PM on 31.7.1974 and had found following injuries on his person:-

- "1. Incised wound 2"x1/4"x bone deep on the head in the middle.
2. Lacerated wound 2"x1/3" x bone deep on the head right side above 1 1/2" away midline.
3. Lacerated wound 1"x1/4"x1/5" on the head left side about 1 1/2" away midline.
4. Incised wound 1 1/4"x1/4"x1/5" on the lower part of the left arm lateral aspect.
5. Abrasion 3"x 1/4" x skin on lower part of the back.
6. Bruise 3"x 1 1/4" on the lower part of the right arm lateral aspect.
7. Bruise 3 1/2"x 3/4" on the upper part of the left thigh front aspect."

13. It is this injured witness PW-4 who has given statement to the police at 4.15 PM proved by the prosecution as Exhibit-2 wherein he had stated that there was a irrigation dispute between Sukhai Yadav and him and his family members and at



8AM on 31.7.1974 when a challenge made by Sukhai Yadav as to why the drain was cut by the prosecution party, it had led to hot exchange of words whereafter Sukhai Yadav is alleged to have gone back to his house and returned with a number of armed members of mob in which P.W.4 had claimed to have identified Sukhai Yadav armed with Bhala and others also variously armed who having arrived at the spot had first started indiscriminately assaulting him (P.W.4) in which he had sustained injuries on his head by a Bhala blow given by Sukhai Yadav whereafter an order was given to assault others and the deceased Babulal Mandal was given a Garasa blow by Luteshwar Yadav and Farsa blow by Bisan Yadav and Lathi blow by Prem Yadav. He has also stated that his uncle Basudeo Mandal was also assaulted indiscriminately by Garasa but he did not name any person as assailant of Basudeo in his earliest oral statement made to the police in the hospital at 4 PM well before institution of F.I.R. The PW-4 at that point of time in his statement to police had named Dharmdeo Mandal (PW-3), Chulhai Mandal (not examined), Siyalal Mandal (not examined), Lakhan Mandal (not examined) as the only eyewitness who are said to have seen the occurrence or him in the injured condition. According to him (P.W.4), Saryu Prasad Singh(not examined), Yogendra Mandal (not examined), Maheshwari Mandal (PW-2), Sitaram Mandal (not

examined), Mahendra Mandal (not examined), Turi Mandal (PW-1) had arrived at place of occurrence later on and had taken him to Ekchari Railway Station from where by train they had brought him to Bhagalpur for his treatment in hospital.

14. From the aforesaid statement of the PW-4 before police, it would appear that there is a complete go-by to the motive of the manner of occurrence suggested by the informant P.W.7 in the subsequent F.I.R. inasmuch as, according to P.W.4, it was the irrigation dispute with Sukhai which became the immediate cause for hot exchange of words which was followed by indiscriminate assault on him and the deceased Babulal and his father Basudeo whereas if the informant PW-7 is to be believed, he in his F.I.R. to police had described the preemption case relating to dispute of the land purchased by appellant Tapeswar Mandal to be the main reason for the occurrence. What really makes the deposition of P.W.4 in court also doubtful is that in his earlier statement given to police in Bhagalpur even before the lodging of the F.I.R. is that the manner of occurrence according to him was first of an assault on him followed by an assault on the deceased Babulal Mandal and finally on Basudeo whereas in course of deposition in court, he in tune with all other prosecution witnesses had projected a totally different picture that firstly Babulal Mandal (deceased) was

assaulted and when he was sought to be saved by his father Basudeo Mandal, he too was attacked by some of the appellants and finally he (P.W.4) was assaulted after causing fatal injury on Babulal and severe injury on Basudeo.


15. Thus, the entire manner of occurrence according to this witness P.W.4, who had changed his version in the court in contrast to what he had stated before the police in hospital at Bhagalpur assumes importance, inasmuch as, not only he had changed the entire sequence of event of assault but has also changed the name of assailants, inasmuch as, in his earliest statement to the police at Bhagalpur Hospital, he had stated that he was assaulted only by Sukhai Yadav whereas in course of deposition before the court, he had alleged he was assaulted by Sukhai Yadav, Bhupal, Vishwanath Yadav and Prem Yadav. He has also tried to give a complete facelift to the prosecution case by changing his earliest version on the assailant of Babulal Mandal, inasmuch as, in the earliest statement before the police on the date of occurrence itself in the hospital at Bhagalpur, he had disclosed the name of Luteshwar Yadav, Bisan Yadav and Prem Yadav as the person who are said to have inflicted injuries on the person of the deceased Babulal Mandal whereas in his deposition in court, he had omitted the name of Bisan Yadav and Prem Yadav and substituted it by



Bhupal while reiterating the assault by Sukhai Yadav in both the places.


16. Thus, if this is the state of affairs of the most natural and possible injured eye witness P.W.4 namely, Rupchand Mandal, this Court will find it really difficult to give any sanctity to his evidence in court unless there be some authentic corroboration to the manner of occurrence by some other witness. It is here that one has to take note of the fact that P.W.1 Turu Mandal who was the ploughman of the informant P.W.7 and said to be the eye witness has been declared hostile by the prosecution. Another labourer of the informant P.W.5 Dinesh Mandal said to be present and an eyewitness has also been declared to be hostile by the prosecution. Similarly, yet another labourer P.W.9 Satya Narain Mandal also said to be an eye witness according to the informant has also been declared to be hostile. As a matter of fact, when even the informant himself has been declared to be hostile on the issue of manner of occurrence, there is no corroboration to the evidence of P.W.4 by any witness.

17. In such a situation, before this Court would examine the limited sanctity of the evidence of the aforesaid hostile witnesses i.e.P.W.1, P.W.5, P.W.9 and informant P.W.7, it would like first refer to the evidence of P.W.2, P.W.3 and P.W.6 who are



the remaining witnesses cited by the prosecution as eye witnesses to the occurrence. P.W.2 Maheshwari Mandal has in his deposition had stated that appellant Luteshwar Yadav and appellant Bhopal Yadav were the assailants of Babu Lal Mandal and appellant Bhupal Yadav and appellant Rustam Yadav were the persons who had assaulted Basudeo Mandal and appellant Luteshwar Yadav was the person who had assaulted Rupchand Mandal. Thus if he is accepted as an eye witness, the deposition of the injured eye witness P.W.-4 has to be altogether discarded because of a complete different version given by P.W.4 but then this Court will have to give far more weightage to the evidence of P.W.-4, the injured witness and thus, the presence of this witness P.W.2 as an eye witness becomes wholly doubtful specially when he has himself admitted in paragraph no.9 of his cross-examination that he was never examined by the police and for the first time, he had given deposition only in the court.

18. That would leave this Court to examine the evidence of P.W.3 Dharmadeo Mandal who also had been named as an eyewitness in the First Information Report by P.W.-7 the informant and also by the injured P.W.4. P.W.3 had stated that appellant Luteshwar Yadav, appellant Bhupal Yadav and appellant Rustam had caused fatal injury on the person of Babu Lal



(deceased) whereas appellant Bhupal Yadav and appellant Rustam had caused injuries on the person of Basudeo Mandal and about Rupchand Mandal (P.W.4), he could not say as to whether he had sustained any injury or anyone had caused him injury. This witness P.W.-3 having himself ruled out inflicting of any injury on the person of the P.W.4, the injured who had been examined by the Doctor at Bhagalpur within six hours of the occurrence therefore can hardly be relied as a trustworthy witness specially when he had also left out the name of appellant Tapeshwari Mandal by asserting that he was not at all present at the time of occurrence whereas P.W.6 and P.W.7 had named appellant Tapeshwari as leading member of the mob indulging in assault of deceased and in fact the main reason for the dispute arising out of the preemption case. Not only that, in his examination-in-chief in paragraph no.2, the P.W.3 having narrated of the assault made on Babu Lal and Basudeo had himself stated that he could not say whether anyone else was assaulted in the occurrence. Thus, if this witness P.W.3 is to be believed then the presence of injured Rupchand Mandal P.W.-4 itself becomes doubtful at the place of occurrence which itself would completely demolish the prosecution case. In that view of the matter, this Court can also not place reliance on the evidence of P.W.3 much less accept him as an eye witness to the occurrence.

19. That would leave this Court to examine the evidence of P.W.6, Narayan Mandal, who has either very fairly or purposely come out to say that he cannot say who had assaulted whom. He of course has claimed some identification which we will deal at an appropriate place but on the basis of his deposition in court, he cannot be held at least as an eyewitness to the occurrence.

20. That is the entire prosecution evidence on the point of assault and the manner of assault. It is here that earliest version of P.W.-4 to the police as contained in Exhibit-2 assumes greater significance, inasmuch as, he had himself stated that an irrigation dispute at the instance of Sukhai Yadav was the reason which led to the occurrence and breaking of the heads of the three members of prosecution party. This aspect of the matter in fact gets further corroboration from the following statement of the P.W.-2, an alleged eyewitness, who in paragraph no.7 was suggested with regard to the entire genesis and the manner of occurrence wherein the prosecution party itself was alleged to be aggressor. Paragraph no.7 of the deposition of P.W.2 being very significant on this aspect is quoted hereinbelow:-

*“सुखाय यादव को किसने किसने मारा था मैं यह भी नहीं कह सकता हूँ। मुझे नहीं मालूम है कि उन्होंने कोई मोकदमा किया था या नहीं। अपने गाँव के नारायण मंडल को मैं जानता हूँ। सच्चिदा नन्द मंडल को मैं नहीं जानता हूँ। मुझे नहीं मालूम है कि घटना के समय में सुखाय यादव को नारायण मंडल इत्यादि 150 व्यक्तियों के हसेड़ी लेकर उस खेत पर गया था तथा उन लोगों ने उन्हें मारपीट किया*

*था। तथा सुखाय ने उनलोगों के विरुद्ध मोकदमा किया था।”*

21. It is quite surprising that even when the motive or the genesis of irrigation dispute and cutting of ridges of the field of Sukhai Yadav was specifically admitted by P.W.4 in his earliest version to the police as also in course of aforesaid deposition by P.W.2, the prosecution has made no attempt to explain this aspect which was definitely inconsistent with the motive and genesis suggested by the prosecution in the First Information Report lodged at the instance of the informant P.W.-7 who has been infact declared hostile by prosecution. The story of land dispute between Tapeswar and his preemption case to be the main reason for the occurrence has been infact left high and dry and in fact altogether abandoned which makes the prosecution case more vulnerable. P.W.7 in fact in his deposition has totally resiled from his earlier case of issuance of notice in preemption case on Tapeshwari or the enmity with him being the reason for the occurrence in question. In course of his deposition in court, P.W.-7 in fact had made no effort at all to romp the prosecution case home on the basis of the motive and genesis as suggested by him in his First Information Report and no wonder he was also declared hostile by the prosecution itself.

22. It is true that the deceased Babu Lal had sustained four incised injuries. Injury nos. 1, 3, 4 & 5 were incised injuries


which according to the doctor was caused by sharp cutting or sharp and pointed weapon. The following injuries infact found by the Doctor P.W.12 in the postmortem report:-

- (i) One incised wound 2"X1" up to bone on the right side of head.
- (ii) One swelling 3"X2" on the left side of head.

On removing scalp oval depressed commuted of left perital bone was detected in an area of 2"X3" and fractured pieces of bones lacerated menenges and brain.

- (iii) One incised would 8 1/2" X 2" xphoracit cavity deep was detected in the back of chest at the level of 8th phoracit vertebra and bone was cut and spinal chord and posterior portion of rib of both sides were cut and separated from lung.
- (iv) One incised penetrating would 8"X1/2"X3" two inches above left elbow and left humerus was cut.
- (v) One incised would 1/2"X1/4"X1/4" just above left eyebrow.

would definitely make out a case of assault on his person but then the crucial question would be if Luteshwar was the only one person who is said to have assaulted him, in view of the inconsistent version of all the witnesses as with regard to assault on the person of



Babu Lal, can it be said that Luteshwar Yadav had caused all the four incised injuries both by the sharp cutting and also sharp pointed weapon. It is here that the weapon in the hand of Luteshwar Yadav becomes significant, inasmuch as, all the witnesses have consistently said that Luteshwar Yadav was armed with Garasa. A Garasa cannot cause sharp pointed injury and here the prosecution has miserably failed to prove as to who was that person who had caused such sharp pointed injury on the deceased.

23. The identification, therefore, of the accused persons has assumed greater significance in these two appeals, inasmuch as, if the trial court had adopted a safe standard of eliminating presence of person of any accused person having single identification and thus if this appellate Court also goes by that same standard (which is even otherwise a very safe standard in a criminal case where a large number of persons are alleged to have taken part in the offence), this Court would find that in view of the evidence of P.W.4 leaving out appellant Tapeshwari unidentified and both P.W.3 and P.W.4, who are said to be alleged eye witnesses not naming and identifying Tapeshwari, who had been named only by the P.W.6 and P.W.7 and out of them also P.W.6 has very frankly conceded in paragraph no.2 of his cross-examination that he did not say about identification of Tapeshwari to any person. That would make the case of the

appellant Tapeswar as a case of single identification at the hand of P.W.7, the informant but as has been noted above, the evidence of P.W.7 turned hostile on the point of manner of occurrence cannot be relied in isolation and in this way, Tapeswar safely go out of the ambit of the prosecution case and would deserve acquittal.

24. Coming to the case of rest of the appellants, this Court would find that there is no consistency with regard to the identification. True it is that the occurrence had taken place in broad day light at 8 AM but when in the earliest version of the P.W.4 before the police at 4.15 PM on 31.7.1974, he had named only one person among the prosecution witness to be the eye witness namely Dharmadeo Mandal (P.W.3), the rest of the prosecution case suggesting P.W.1 to P.W.7 as well as P.W.9 as eye witness must be examined with due caution. As discussed above, P.W.3 Dhrubdeo can hardly be said to be a reliable witness which in turn further weakens the case of prosecution.

25. What infact however has given the death blow to the prosecution case is the statement of the informant P.W.7 himself, who has not only stated in his examination-in-chief that “मैं नहीं कह सकता हूँ कि उस नाला को काटने को लेकर घटना के दिन कोई झंझट हुआ था” but has also stated not a word in the examination-in-chief in relation to the assault on Babu Lal Mandal and Rupchand Mandal (P.W.4). In that



view of the matter, it would be very difficult for this Court to accept either the solitary version of the P.W.4 or his injury to have been inflicted in the manner indicated, inasmuch as, when the prosecution party were themselves aggressors and had attacked Sukhai Yadav and his men as has been accepted by P.W.4 and P.W.2 and thus, the false implication of other appellants also cannot be ruled out.

26. Thus having given conscious consideration to the entire prosecution case, this Court is satisfied that the prosecution has not been able to prove its case beyond reasonable doubt against any of the appellants.

27. In the result, both the appeals are, accordingly, allowed and the impugned judgment of their conviction and sentence is hereby set aside. The appellants who are on bail would stand discharged from the liabilities of their bail bonds.

**(Mihir Kumar Jha, J)**

**(Aditya Kumar Trivedi, J)**

Rishi/-